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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,379	07/11/2001	Pedro Saavedra Pacheco	U 013551-2	8320
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NEW YORK, NY 10023

EXAMINER
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CUEVAS, PEDRO J

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 05.21.2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/903,379	PACHECO, PEDRO SAAVEDRA
	Examiner Pedro J. Cuevas	Art Unit 2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 17 March 2003.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 33-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 33-36,38 and 39 is/are rejected.

7)  Claim(s) 37 and 40 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 33-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 17, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 33-34, 36, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,684,817 to Goldwater in view of U.S. Patent No. 4,134,710 to Atherton.

Goldwater disclose the construction of a valvular sail power plant for generating electrical energy from a flowing medium of wind comprising:

a stationary supporting structure (Figures 25 and 26);

a rotary structure (Figures 1, 3, 5, 7, and 9) supported for unidirectional rotation on said fixed structure;

a vertical rotary shaft (1) supporting said rotary structure and rotatable supported by said fixed structure;

said rotary structure comprising an open frame (2), a plurality of panels (6, 7, 8, and 9) each having a side edge rotatable supported by said open frame for pivotal movement between an open position perpendicular to said frame and a closed position in a plane of the frame;

said panels being supported from said frame solely by their side edges so that top and bottom edges thereof are free and unrestrained such that when the panels are in closed position and exposed to the flowing medium, the panels will exert a rotational force on the frame to produce rotation of the rotary structure (Figures 16 and 17 described on column 5, lines 12-41);

a system (Figure 15) for pivotally moving said panels in synchronism between said open and closed positions including an aligner cable (225) connecting said panels at said side edges to rotate the panels to closed position when facing the flowing medium and to open position after the frame has undergone a rotation of 180° (column 5, lines 53-57);

said system for pivotally moving said panels comprising oscillatory stops (230) on said frame which block rotatable movement of said panels in the closed position and

permit rotatable movement of the panels to said open position, and a panel aligning wire (228) for synchronizing position of said panels;

said rotary shaft extending outwardly from said frame, and supporting said frame so that its lower edge is free and the frame can undergo free travel without restriction.

However, it fails to disclose means coaxial with said rotary shaft for generating electrical energy from rotation of the frame and the rotary shaft.

Atherton teach the construction of a simultaneous plural-directional flow motor having means (14) coaxial with rotary shaft (20) for the purpose of generating electrical energy (with electric generator 16) from rotation of a frame and the rotary shaft.

It would have been obvious to one skilled in the art at the time the invention was made to use the simultaneous plural-directional flow motor disclosed by Atherton on the valvular sail power plant disclosed by Goldwater for the purpose of generating electrical energy from rotation of a frame and the rotary shaft.

6. With regards to claims 38 and 39, Goldwater in view of Atherton disclose:

an aligning wire support comprising a thin metal bar on each panel supporting several of said aligning wires; and

said wires passing through the aligning wire supports, and are adjustable to adjust distances between the panel oscillation axes such that the panels rotate synchronously in closing and opening movements as shown in Figure 15.

7. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,684,817 to Goldwater in view of U.S. Patent No. 4,134,710 to Atherton as applied to claims 33-34, 36, and 38-40 above, and further in view of U.S. Patent No. 3,978,345 to Bailey.

Goldwater in view of Atherton disclose the construction of a valvular sail power plant having plural-directional flow motor as described above.

However, it fails to disclose an apparatus wherein the flowing medium is water, and the rotary shaft is horizontal.

Bailey teach the construction of a system wherein the flowing medium is water, and the rotary shaft is horizontal for the purpose of utilizing energy in a fluid current.

It would have been obvious to one skilled in the art at the time the invention was made to use the system construction disclosed by Bailey on the valvular sail power plant having plural-directional flow motor disclosed by Goldwater in view of Atherton for the purpose of utilizing energy in a fluid current.

***Allowable Subject Matter***

8. Claims 37 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter.

The prior art of record, taken alone or in combination, fails to teach the construction of an comprising:

pins restricting said stops to limit rotation of said panels to 90°, and means for releasing said pins when the flowing medium develops a force exceeding a predetermined maximum value thereby releasing the panels for free rotatable movement; and

a steel wire connected to the bottom of the oscillation stops, and responsive to a wind speed sensor, which activates a motor at a bottom side of the panel frame to act on the wire to control the oscillation stops so that the panels rotate in the direction of wind flow, while the frame is braked.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

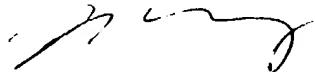
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro J. Cuevas whose telephone number is (703) 308-4904. The examiner can normally be reached on M-F from 8:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor R. Ramírez can be reached on (703) 308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-1341 for regular communications and (703) 305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Pedro J. Cuevas  
May 13, 2003